

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MONSANTO COMPANY and
MONSANTO TECHNOLOGY LLC,

Plaintiffs,

vs.

E.I. DUPONT DE NEMOURS AND
COMPANY and PIONEER HI-BRED
INTERNATIONAL, INC.,

Defendants.

Case No. 4:09-cv-00686 (ERW)

**DUPONT'S AND PIONEER'S SUBMISSION
OF SEARCH TERMS IN ACCORDANCE WITH
THE COURT'S CASE MANAGEMENT ORDER**

Pursuant to the March 3, 2010 Case Management Order (CMO) (Dkt. #178) and the Court's April 5, 2010 Docket Text Order, Defendants and Counterclaim Plaintiffs E.I. du Pont de Nemours and Company ("DuPont") and Pioneer Hi-Bred International, Inc. ("Pioneer") respectfully submit the attached search terms for the Court's approval.

Over the past months, the parties have met and conferred regarding the appropriate search terms for the review of electronic data collected in this action. This process has been intensive and detailed. The parties have finalized their list of the first 50 custodians from whom documents and data are to be identified and collected. It is contemplated that the parties' respective search terms will be applied to cull the universe of documents and data collected from these sources, and from which responsive materials will be identified and produced in this action. Given the timing for the production of documents and data in the Court's CMO, it is imperative

that the lists be finalized so that the logistics of collecting, culling and producing responsive materials can begin.

By way of background, each side prepared a preliminary list of search terms to be used for searching its own documents. The parties exchanged those lists on February 16, 2010, and then the parties exchanged numerous comments and recommendations for modifications and additions to the lists over the next six weeks. The parties also met and conferred numerous times regarding those lists and the comments provided.

On March 31, 2010, DuPont and Pioneer sent Monsanto an email providing Monsanto with certain comments to the search terms that were to be used in searching DuPont and Pioneer electronic documents and data, and also provided Monsanto with a revised list of the search terms to be used in search Monsanto electronic documents and data. Since that time, Monsanto has not provided any substantive comments, objections, or proposed revisions to these lists of search terms. The parties were originally required by Paragraph 4(d) of the Court's CMO to file the lists with the Court on April 2, 2010. However, when Monsanto failed to provide any response to DuPont's and Pioneer's March 31, 2010 email, DuPont and Pioneer suggested, and Monsanto agreed, to ask the Court to extend the April 2, 2010 date to today, April 7, 2010. The Court granted this extension. Notwithstanding this extension, Monsanto still has not provided any substantive response to DuPont's and Pioneer's March 31, 2010 email concerning the revised lists of search terms.¹

As a result, and in the absence of any further communication from Monsanto on this issue, DuPont and Pioneer submit the following lists of search terms in compliance with Paragraph 4(d) of the Court's CMO:

¹ On April 6, 2010, Monsanto notified Pioneer that it would be providing comments to DuPont's and Pioneer's March 31, 2010 email concerning the revised lists of search terms "shortly," but Monsanto still had not provided any such comments at the time the instant document was filed with the Court.

- (1) Attached as Exhibit A is DuPont's and Pioneer's proposed final list of search terms to be applied to the electronic data and documents collected **by DuPont and Pioneer** in this action. This list is based on the comments provided to Monsanto on March 31, 2010. As indicated, Monsanto has not provided any objection or comments to these terms. Therefore, DuPont and Pioneer respectfully request that the Court approve these terms at its earliest opportunity.
- (2) Attached as Exhibit B is the list of search terms to be applied the electronic data and documents collected **by Monsanto** in this action. This list was also provided to Monsanto on March 31, 2010 and, likewise, Monsanto has not provided any objection or comments to these search terms. Therefore, DuPont and Pioneer respectfully request that the Court also approve these terms at its earliest opportunity

As previously indicated, it is imperative that the lists of search terms be finalized and approved by the Court so that the logistics of collecting, culling and producing responsive materials can begin and the parties can complete the production of documents and data within the time provided in the Court's CMO. DuPont and Pioneer therefore respectfully request that the Court approve the search terms set forth in Exhibits A and B attached hereto.

Dated: April 7, 2010

Respectfully submitted,

LEWIS RICE FINGERSH, L.C.

By: /s/ C. David Goerisch
Andrew Rothschild, #4214
C. David Goerisch, #77207
600 Washington Ave., Suite 2500
St. Louis, Missouri 63101
arothschild@lewisrice.com
dgoerisch@lewisrice.com

Leora Ben-Ami
Thomas F. Fleming
Christopher T. Jagoe
Howard S. Suh
KAYE SCHOLER LLP
425 Park Avenue
New York, New York 10022
lbenami@kayescholer.com
tfleming@kayescholer.com
cjagoe@kayescholer.com

Donald L. Flexner
BOIES, SCHILLER & FLEXNER LLP
 575 Lexington Avenue, 7th Fl.
 New York, New York 10022
 dflexner@bsfllp.com

James P. Denvir
Amy J. Mauser
BOIES, SCHILLER & FLEXNER LLP
5301 Wisconsin Avenue, N.W.
Washington, D.C. 20015
jdenvir@bsfllp.com
amauser@bsfllp.com

***Counsel for Defendants E.I. du Pont de Nemours
and Company and Pioneer Hi-Bred International,
Inc.***

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2010, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

- **Steven M. Berezney**
steve.berezney@huschblackwell.com
- **Kurt G. Calia**
kcalia@cov.com
- **Matthew A. Campbell**
macampbell@winston.com
- **Scott W. Clark**
sclark@mwe.com, knappj@howrey.com
- **Joseph P. Conran**
joe.conran@huschblackwell.com
- **Todd J. Ehlman**
tehlman@winston.com
- **Anthony J. Franze**
Anthony_Franze@aporter.com
- **Greg G. Gutzler**
greg.gutzler@huschblackwell.com
- **Susan K. Knoll**
sknoll@mwe.com
- **Omri E. Praiss**
omri.praiss@huschblackwell.com
- **John J. Rosenthal**
jrosenthal@winston.com
- **Steven G. Spears**
sspears@mwe.com, knappj@howrey.com, jordanc@howrey.com
- **Tamara M. Spicer**
tamara.spicer@husch.com, jean.melenbrink@husch.com
- **Dan K. Webb**
dwebb@winston.com
- **Robert N. Weiner**
Robert_Weiner@aporter.com

_____/s/ C. David Goerisch